

To be eligible for the reimbursement of Federal Highway Administration (FHWA) funds for payments to a consultant, the procedures in this chapter shall be followed. If a local agency elects to retain the consultant at its' own cost, only state law must be followed.

### 31.1 General Discussion

This chapter covers those agreements for architects, landscape architects, land surveying, and engineering services outlined in RCW 39.80. The definitions of the four professions above are described in RCW Chapters 18.08, 18.43, or 18.96.

Services such as long range planning and studies, economic analysis, and environmental and biological assessments may also be provided by professionals outside these fields.

Consultant services include the following:

- Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement.
- Any phase of project development as well as special studies or other assignments within any phase.
- Periodic examination and consultation or full-time technical inspection during the construction phase.
- Consultant design and preparation of plans, specifications, and estimates is common when an agency's staff is small or when an agency needs additional expertise.

Prohibitions include:

- FHWA regulations prohibit consultants serving in a management role for agreements in excess of \$10,000.
- Consultant services do not include purchased services provided by a vendor to accomplish routine, continuing, and necessary services.
- Section 319 of Public Law 101-121 prohibits federal funds from being expended by consultants or subconsultants who receive a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a federal agency or Congress in connection with awarding any of the above.

### 31.2 Advertisement/Solicitation

Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope and capabilities of available small and disadvantaged owned firms.

Consultants may be solicited for: (1) a specific project; (2) a specific stage of a project (i.e., Design Report); (3) general engineering services (i.e., supporting services of an agency's staff in studies, design, etc.); (4) for more than one project (i.e., several small bridge design projects) or multiple phases of a single project or (5) for a combination of the above.

State law (RCW 39.80) requires that each agency must advertise that agency's requirement for architectural services, land surveying services, or engineering services. An agency can comply with this requirement by:

- Publishing an announcement on each occasion when professional consultant services are required by the agency (mandatory for projects exceeding \$100,000 — optional for specific projects less than \$100,000);
- Announcing generally to the public projected requirements for any category or type of professional services. A "small works" roster to address typical duties or needs (small works are projects less than \$100,000) may be established through means of an annual advertisement to avoid the need for individual solicitations.

The need for consultant services must be advertised at least one day per week for two (2) consecutive weeks (14 day minimum) in the area newspaper used for publication of legal notices. A three (3) week minimum response time from the initial date of publication should be provided to consultants.

These advertisements may be supplemented by additional advertisements in special interest publications such as the *Daily Journal of Commerce*, trade magazines or publications utilized by disadvantaged business enterprises. Local agencies are encouraged to ask consultants to annually submit a current statement of qualifications and performance data. This information can be used along with that submitted by other firms that respond to the agency's solicitations for small works.

**.21 Advertisement Content.** The advertisement should contain the following (see Appendix 31.81 for a sample advertisement):

- A project title, estimated project cost, and estimated start and end dates;
- The general scope and nature of the project or work for which services are required and the address of a representative of the agency who can provide further details;
- Solicitations of qualification statements must incorporate a clear and accurate description of the technical requirements for the service to be procured, including any special conditions or certifications required;

- Solicitations must clearly set forth sufficient detail on how applicant qualifications will be evaluated. This may include but is not limited to key personnel, firm experience, ability to meet schedule, past performance, in-house expertise, familiarity with WSDOT/ FHWA standards, and DBE approach and commitment;
- For engineering and design related services, specific project cost estimates shall not be requested until a consultant has been selected;
- Nonengineering service applicants should be asked provide estimates for the man-hours and classifications needed to complete the project.
- In the event that a project covers two or more distinct phases, the agency is not obligated to utilize the original consultant for subsequent phases. If the agency desires this option, the advertisement must state the possibility of a multi-phase agreement at the discretion of the contracting agency;
- All prospective consultants must be advised that Federally funded projects will be held to Federal EEO requirements;
- ADA and Civil Rights language for the employing agency;
- Due date for responses and publication dates;

### 31.3 Pre-Award Audits

The intent of an audit is to validate financial information supplied by a consultant in a cost proposal. Pre-negotiation audits provide the necessary data to assure that the consultant has an acceptable accounting system and internal control policies, has sufficient resources to complete the work on time, has adequate and proper justification for the various rates charged to perform work, and is aware of FHWA's cost eligibility and documentation requirements. In the event that a project must begin before an audit can be completed, provisional wages based on industry standards may be paid through completion of the audit with wage adjustments made in a supplemental agreement.

Federal regulations require the following:

- Audit evaluation prior to negotiation of proposals for which the total costs exceed or are expected to exceed \$250,000.
- Audit evaluation of proposals of less than \$250,000 when there is inadequate knowledge concerning the prospective consultant's accounting policies, cost systems, and/or previous unfavorable experience or as requested by WSDOT or FHWA.

An audit conducted by another government agency will satisfy this requirement if the audit criteria used by the other agency conforms with 48 CFR 31. An audit conducted by a private accounting firm must be reviewed and accepted

by WSDOT before being accepted for use in an agreement. The Local Agency Agreement should anticipate a charge averaging \$5,000 for these audit costs. WSDOT and/or FHWA may at their discretion require a final audit for any project exceeding \$100,000.

### 31.4 Consultant Selection Process

The local agency shall establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be selected based upon the qualifications they present. For engineering and design related services, fees for services can not be considered during the selection process. For more guidance, refer to the Municipal Research and Services Center (MRSC) of Washington guide, "Contracting for Professional Services in Washington State," informational bulletin number 485.

The following are frequently utilized as part of the consultant selection process:

1. Written Response Only to the Request for Proposal (RFP). This approach is best for smaller, clearly defined projects or projects which are heavily reliant upon their written presentation such as environmental reports.
2. "Live" Interviews and Presentation of the RFP by Consultant Individuals or Teams. Provides for interaction with the agency and showcases the consultant's presentation skills. This approach is best for larger, more complex projects but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.
3. Telephone Interviews. Provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects or for selecting from a small works roster.

#### .41 Exceptions to the competitive process used for consultant selection:

1. Sole Source. The consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The local agency must provide the Region Local Programs Engineer written justification for selecting this option based upon either uniqueness of the service or sole consultant availability at the location required; include an estimate of cost savings (as applicable). **Written approval from the Region Local Programs Engineer must be received prior to agreement execution.**

The Region Local Programs Engineer has sole source approval authority for the following situations:

- An original agreement inadvertently expired and the work is not completed.

Or

- An original agreement has expired and it is discovered that additional work is needed such as:
- A project requires additional geotech work from the firm that was originally used.
- A design consultant is to be used in a construction advisory role and the project was advertised with this option.

And in any case;

The cost of the new supplement or agreement does not exceed fifty percent of the original agreement amount or \$100,000 whichever is lesser.

All other sole source requests must have written H&LP approval.

2. Subsequent Phasing. Selection of a consultant to perform subsequent project phases may only occur if this option was advertised originally (i.e., Phase 1 P&E, Phase 2 Construction).
3. Emergency. To address a set of unforeseen circumstances beyond the agency's control which present a real, immediate threat to the proper performance of essential functions or may result in the material loss or damage to property, bodily injury or loss of life if immediate action is not taken (consult LAG Manual, Chapter 33).
4. Contract Amendments. Amendments which do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.

**42. Documentation of Selection.** Following consultant selection, the local agency shall retain the following documentation in the project file:

- The names of a minimum of three consultants considered for the work (excluding exceptions detailed above);
- Consultant selected and reasons why this consultant was chosen over the others.

**The local agency will notify the consultant of their selection in writing and meet with the consultant to reach a complete and mutual understanding of the scope of services.** The local agency should include key people with appropriate technical expertise within the agency to ensure that their concerns are addressed. The following are typically discussed while developing an agreed upon scope of services:

1. A list of meetings the consultant is expected to attend, key personnel and expected location of the meetings;

2. The anticipated design schedule — the local agency shall designate the basic premises and list criteria to be used in design development;
3. Any special services required;
4. Complexity of the design;
5. Safety and operational considerations;
6. Environmental considerations;
7. Survey and geotechnical testing requirements;
8. Inspection services during construction;
9. Quality control during construction;
10. Preparation of forms, letters and documents;
11. Property map preparation.

**.43 Actions Following Receipt of Consultant's Proposal.**

Agency responsibilities include:

- Compare the consultant's proposal with the agency's own estimate, examining the scope of work, work hours, and estimate of cost (see Independent Estimate for Consulting Services, Form DOT 140-012 EF).
- Ensure the consultant has divided the project into work units and related time units in such a manner that the estimate can be readily reviewed for work hours, rates of pay, overhead, profit, and itemized direct nonsalary costs.
- Request records to confirm the consultant's rates.
- Record and retain an explanation of differences in work hours or costs between the agency's independent estimate and the negotiated consultant fee. Non-CA agencies must have the differences reviewed by WSDOT.
- Negotiate an agreement with the consultant selected and retain a record of these negotiations (see Appendix 31.82). Negotiations may include the following:
  1. The agency negotiator and the consultant meet or by telephone go over any significant areas of discrepancy between the agency estimate and consultant proposal. Either the consultant satisfactorily explains differences or agrees to address concerns in a revised proposal.
  2. The agency reviews revised proposals and revises their detailed cost analysis accordingly. Steps 1 and 2 are repeated, if required.
  3. The consultant submits a final fee proposal.
- Provide a final offer in writing. The basis for establishing a maximum amount payable is documented.

- If unresolvable differences exist between the consultant and local agency, the agency notifies the consultant in writing and proceeds to select the next highest rated consultant. Negotiation steps and records will be repeated with the alternate consultant selected.
- .44 Multi-Phase Projects.** In the case of projects covering two or more distinct phases, when the cost for the second phase depends on decisions reached during the first phase, the agreement should cover only the first phase. The agency is not obligated to use the same consultant firm for all phases. Separate consultant agreements may be considered for preliminary engineering and construction engineering. The agreement for preliminary engineering should state that the consultant may be considered for construction provided this option was identified in the advertised solicitation. The consultant's engagement to complete subsequent phases depends upon the consultant's satisfactory performance on prior work and upon negotiation of an agreement for the subsequent phase(s).
- .45 Environmental Assessment /Environmental Impact Statement / Environmental Classification Summary.** The first agreement would include preliminary engineering through final approval of the environmental documents. Preparation of the PS&E could be under a separate agreement, with continuation of the original consultant at the option of the agency, provided this was stated in the original advertisement.
- .46 Non-CA Agencies.** If the agency is not approved for CA, the request for use of consultants shall be submitted with the draft consultant agreement to the Regional Local Programs Engineer for approval prior to agreement execution. The request shall include the information requested in Appendix 31.83.
- .47 Payment Options.** The following are acceptable methods of payment for FHWA funded projects. Refer to the Standard Agreement Exhibits for further guidance and required forms:
- a. **Lump Sum.** This method of compensation is not acceptable for construction administration agreements and is only appropriate where the scope of work (quantity and type) can be clearly defined in advance. **Scope of work changes are not allowed with this type of payment.** Lump sum payment is generally used for investigations, studies, and basic services on design projects. Examples include design reports, plans specifications and estimates (PS&E) and preparation of operating, maintenance, or training manuals. A qualified representative for the agency must prepare, date and sign an estimate detailing the hours required for each type of work as well as the hourly rate.
  - b. **Cost Per Unit of Work.** This method of compensation is used when the unit cost of the work can be determined in advance with reasonable accuracy, but the extent of the work is indefinite. Examples include soils investigation where costs are based on per foot of drilling, installation of observation wells, soil testing, structural foundation analysis and reports, expert witness testimony, and construction agreement administration.
  - c. **Actual Costs Plus a Fixed Fee.** This method of compensation is used when the extent, scope, complexity, character, or duration of the work cannot be reasonably determined in advance. Examples include preparation of environmental documents, project design documents, and PS&E for large or complex projects, including major bridges. The consultant is reimbursed for all eligible direct and indirect costs within defined limits plus a predetermined amount as a fixed fee. The costs are determined by:
    - Salaries of employees with time directly chargeable to the project and salaries of principals for the time they are productively engaged in work necessary to fulfill the terms of the agreement. Actual rates of pay for principals actively involved in the project will be included in each agreement.
    - Direct nonsalary costs incurred in fulfilling the terms of the agreement. Travel expenses will be limited to the maximum allowed by WSDOT Directive D 13-50.
    - The consultant's overhead or indirect costs properly allocable to the project. A break out of overhead items will be included in each agreement. Contact your Regional Local Programs Engineer for maximum allowable overhead or fixed fee rates.
    - Management reserve funds are an agency option and are to address overruns of direct salary and overhead costs that might occur under the existing scope of work.
- The fixed fee is derived by considering the financial and professional investments required of the consultant; the extent, scope, complexity, character, and duration of the services; the degree of responsibility to be assumed by the consultant; and other factors contemplated at the time of the negotiations. These shall be documented for reference in case it becomes necessary to adjust the amount of the fixed fee. Maximum allowable fee rates are reserved for the most difficult, complex and risky projects.

Shown as exhibits to the agreement are the consultant's estimate of work, cost rates, overhead rate, and the fixed fee.



- d. **Specific Rates of Pay.** This method is based upon specific rates of pay for each class of employee and is appropriate for relatively minor items of work of indeterminable extent. This method requires constant and direct control of the time and class of employees used by the consultant. Examples include certain types of soils investigations, planting inspections, bridge inspections, expert witness testimony, training presentations, construction inspections, supplementing agency staff on small design projects or studies, and “on-call services.” The rate of pay may be established through one of two processes:

1. Negotiated hourly rate agreements establish the rate of pay through an audit of the consultant before work begins.
2. Provisional hourly rate agreements use the hourly rate determined from an audit of the consultant’s last completed fiscal year or based on industry standards if an audit has not been completed. Provisional rates are established at the beginning of the project and are used until the results of the new audit are known. The provisional rates are then retroactively adjusted to reflect the rate established from the new audit.

- e. **Task Order Agreements.** This type of agreement is used with Negotiated and Provisional Hourly Rate methods of payment. Each item of work is listed by task assignment in the scope of work and each assignment is individually negotiated with the consultant. The maximum amount established for each assignment is the maximum amount payable for that assignment unless modified in writing by the local agency.

While a regular negotiated hourly rate agreement is for a specific project, a single task order agreement can be used for a series of projects. Once the agreement is established, each time the consultant’s services are needed a formal task assignment document is completed that describes the work, location, maximum amount payable, and completion date for the task. The agreement does not have to be renegotiated for each new task, therefore saving time. An example of a task order agreement would be one for performing construction inspection over a two-year period.

- .48 Profit, Overhead, and Subconsultants.** Mark-ups will not be allowed on subconsultants. The maximum reserve fund for the consultant can be \$50,000 or 10 percent of the agreement, whichever is less. Overhead and profit is **no longer limited to 165 percent.**

An acceptable profit range varies from 17 percent to 35 percent of bare labor costs and is determined by the following:

- Degree of Risk.
- Nature of the work to be performed.
- Joint venture responsibility.
- Extent of the prime’s investment. (The prime should receive no less than 50 percent of the total contract cost.) Hours necessary to manage subconsultants should be written into the agreement.
- Travel necessary for the consultant and its’ subconsultants.
- Other criteria such as bonuses and B & O taxes eliminated from the overhead.
- Audit findings will need to verify the overhead request.

**The final agreement must specify the maximum amount payable.** The basis for establishing the maximum amount should be documented and provisions should be made for adjustment to the maximum amount to accommodate changes in the work distribution or workload.

## 31.5 Standard Agreement and Exhibits

When the cost of consulting services is \$10,000 or more, local agencies must use the Standard Consultant Agreement (see Forms). Standard agreement forms are available from the Regional Local Programs Engineer. The standard agreement was developed to allow the local agency to select the appropriate exhibits and assemble them into a complete agreement package for all types of consulting work. The agreement completion date (expiration date) shall be established based on the project schedule. The agreement completion date establishes the last possible date the consultant may work and be paid for that work utilizing federal funds. Any work performed after expiration of the agreement will be considered non-federally participating. It is of the utmost importance that the agency monitor the project completion date and extend the date by supplemental agreement, if appropriate, prior to the completion date. No supplement to the agreement will be allowed after the agreement has expired. Local agencies should limit agreements to a duration of two years, unless the scope of the work requires the agreement to extend beyond two years.

- .51 Exhibits.** Exhibits for the Standard Agreement are provided. The various payment methods, require their own exhibits. Examples of types of work for each agreement payment type have already been discussed under Section 31.47, “Payment Options.” Most exhibits are common to any agreement, others require selection by the person creating the standard agreement.

## 31.6 Supplements to the Agreement

An agreement shall be supplemented in writing when work which falls outside the scope of the original agreement is requested, when supplemental language to the standard agreement is desired, or when there is a need for time extension or wage adjustment. This may be done by a supplemental agreement (see Forms).

The supplemental agreement should include:

1. A statement that the original agreement will be supplemented to add/change/amend conditions.
2. A scope of work described in sufficient detail to clearly outline what additional work the consultant is to do or what changes are authorized to the existing scope.
3. The mode of payment — i.e., cost-plus-fixed-fee, specified hourly rate, daily rate, and any indirect cost. (**Note:** Always include a maximum amount payable.) Section V of the original agreement should be reviewed prior to negotiating any supplements.
4. A specific time for beginning and completing the project in calendar days or day and month of the year.
5. A statement of whether subletting is authorized; if so, to whom, for what, and the amount payable.
6. A summary of the estimated costs of the original agreement plus those of the supplement(s).
7. Provisions that give both parties to the agreement the authority to act.
8. Upon completion of an audit, a supplemental agreement shall be written to establish negotiated rates: Those rates will be applicable (retroactively) to the first 12 months of the agreement (and thereafter unless renegotiated).

**.61 Patent or Royalty Rights.** Agreements that involve research, developmental, experimental, or demonstration work may require patent or royalty rights. In this case, the Standard Agreement should be supplemented by adding the appropriate language to account for this.

**.62 Risk Management and Added Insurance Requirements.** The agency may change Section XIII of the Standard Agreement to reduce the requirement for Consultant Professional Liability from One Million Dollars to the amount of the Agreement, whichever is the lessor. This should be done for work that involves minimal risk, such as studies. For many consultant firms, covering the one million dollar liability would be an added cost to their overhead or directly to the project.

In the event the agency determines that added liabilities or an insurance policy are warranted beyond the amount allowed in the Standard Agreement, they should negotiate this with the Consultant **after** all other Agreement provisions have been negotiated. This ensures that engineering qualifications, rather than the ability to obtain insurance is the criteria for selection.

The agency will determine the sufficiency of insurance normally provided in the consultant's overhead costs, and will identify the costs beyond that amount on Exhibit H. This exhibit is not needed if the standard agreement provisions are used. These costs will be considered direct project costs, and will not be billed to an FHWA funded project. In the event that Exhibit H is warranted, it should be sent with the risk analysis to the Regional Local Programs Engineer for approval who will forward it to Headquarters for FHWA review, prior to execution by the agency and consultant.

The agency risk analysis should show that the work warrants this added cost and that consideration has been given to less costly solutions, including assuming the risk, or insuring the risk outside of the agreement as an agency cost, or adding a third tier of engineering overview to check the work.

To calculate the risk requires an ability to judge the likely amount of a jury's award if liability is determined. A suggested method is to determine the number of comparative cases presently existing within this state and to develop the probabilities based upon historic awards.

## 31.7 Oversight of the Agreement and Project Closure

WSDOT will review the documentation on selected projects and monitor the consultant selection procedures used by the local agency. The degree of monitoring will be determined by WSDOT and will depend on the nature and character of each project. The local agency shall assign one of its personnel as project administrator to work with the consultant. The project administrator's responsibilities are to:

1. Prepare supplements to existing agreements for services beyond the scope of the original agreement and include the agency's independent estimate of the costs for the work involved;
2. Ensure that no work is done or costs incurred until the agreements and supplements are approved by the approving authority and executed by the proper parties;
3. Conduct regular meetings with the consultant to track progress and identify potential concerns;
4. Act as a liaison between the agency and the consultant to assure compliance with the terms of the agreement, including OEO provisions and the use of mandatory forms;
5. Monitor the consultant's progress reports to ensure that problem areas are reported and corrective action taken;
6. Make sure that all work is within the agreement's scope of work;
7. Establish controls to monitor the time for completion of the agreement to ensure that the specified time limitations are not exceeded;

8. Ensure the accuracy of bills presented by the consultant and their consistency with the work performed;
9. Maintain cumulative cost records to assure that costs are allowable, allocable and reasonable. Track bills to ensure compliance with agreement and fixed fees (see Appendix 31.84 "Sample Invoice Tracking Sheet");
10. Establish controls to prevent overpayment of the Agreement and fixed fees;
11. Ensure that all terms and conditions of the agreement have been met prior to final release of the consultant.

**.71 Invoicing.** The invoice will include the following:

- By name, all employees that worked on the project during the billing period;
- The classification of each employee, the hours worked, the hourly wage rate, and the total wages paid;
- Direct nonsalary costs (Nonsalary costs should be supported for auditing purposes by copies of the invoice or billing instruments the consultant received for payment. These copies may be retained by either the consultant or the agency.).

The local agency may disallow all or part of a claimed cost which is not adequately supported by documentation.

**.72 Documentation.** Original documents may include but are not limited to signed time sheets, invoices, payroll records, rental slips, and gasoline tickets that support the costs billed to WSDOT. The consultant is responsible to account for costs and for maintaining records, including supporting documentation adequate to demonstrate that costs claimed have been incurred, are allocable to the agreement and comply with Part 31 of CFR 48. Time sheets should document hours worked, the billing rate of pay and must be signed by the supervisor or his designee and the employee. **Records will be retained for three years from the date of closure.**

**.73 Closure.** Upon completion of the work under the consultant agreement, the agency will ensure that all terms and conditions of the agreement have been complied with and that all services to be performed under the agreement have been completed prior to final release of the consultant. The local agency should evaluate the consultant's performance and retain this in their records (see Appendix 31.85).

## Appendixes

- 31.81 Sample Advertisement
- 31.82 Sample Record of Negotiations
- 31.83 Information Required in Agreements for Non-CA Agencies
- 31.84 Sample Invoice Tracking Sheet
- 31.85 WSDOT Performance Evaluation Consultant Services
- 31.86 Sample Personal Services Contract for Appraiser
- 31.87 Sample Consultant Agreement for Negotiation Services
- 31.88 Independent Estimate for Consulting Services
- 31.89 Local Agency Standard Consultant Agreement (includes Exhibits A-1 Consultant and Agency Certification; A-2 Debarment Certification; A-3 Federal Fund Restrictions; A-4 Current Cost or Pricing Data; B-1 Scope of Work; B-2 Task Order Assignment; C-1 Lump Sum Payment; C-2 Cost plus Fixed Fee; C-3 Negotiated Hourly Rate; C-4 Provisional Hourly Rate; C-5 Cost per Unit of Work; D-1 Consultant Fee Determination Sheet - Lump Sum, Cost Plus Fixed Fee and Cost per Unit of Work; D-2 Consultant Fee Determination Sheet - Specific Rates of Pay; E Breakdown of Consultant Overhead Cost; F Payment Upon Termination of Agreement; G Subcontract Work; G-1 Subconsultant Fee Determination Sheet; G-2 Breakdown of Subconsultant Overhead Cost; H - Supplemental Language for Increased Insurance Requirement
- 31.90 Supplemental Agreement





STATE OF WASHINGTON NOTICE TO CONSULTANTS FOR  
SR161, 36th Street to Jovita Boulevard

The Washington State Department of Transportation (WSDOT) solicits interest from consulting firms with expertise in Civil and Structural Design. Consultants will be considered for the following project.

**PROJECT DESCRIPTION**

The work to be performed by the CONSULTANT consists of preparing preliminary engineering and PS&E for improvement of SR161, 36th Street East to Jovita Boulevard East. The proposed improvements include widening SR161 to accommodate four lanes of traffic, improving intersection radii, increasing left turn storage, revisions to existing signal systems in order to accommodate the proposed improvements, and construction of retaining walls to provide for roadway widening. The major features of the project are as follows:

- Approximately 1.74 miles of widening for two additional lanes.
- Improving intersection radii to meet design standards.
- Environmental planning and preparation of permit applications.
- Signal modifications and design.
- Structural design for retaining walls and culvert extensions/replacements.
- Determination of R/W needs and R/W plan preparation.
- A partnering effort is possible to assist with short project schedule, coordination of management, decision-making, and interaction with the Bridge Division regarding structural issues and reviews.

**SUBMITTAL**

Submittals should include the following information: Firm name, phone and fax numbers; Name of Principal-in-Charge and Project Manager; and Number of employees in each firm proposed to project.

Submittals will be evaluated and ranked based on the following criteria:

1) Key personnel; 2) Firm experience with WSDOT PS&E; 3) Firm experience with environmental planning and permitting process; 4) Ability to meet schedule; 5) Approach to project; 6) Familiarity with relevant codes and standards; 7) Past performance/references; 8) Ability to provide M/WBE participation.

**Double rating will be given to criteria #2.**

The Department encourages disadvantaged, minority, and women-owned consultant firms to respond.

Please submit FOUR copies of your Statement of Qualifications to: Director of Services Consultant Washington State Department of Transportation, Transportation Building, P.O. Box 47323, (Capital View II, 724 Quince Street S.E., 2nd Floor), Olympia, WA 98504-7323 by April 7, 2002 not later than 10:00 AM. No submittals will be accepted after that date and time. Any questions regarding this project should be directed to Director of Consultant Services, at (360) 705-7102.

Persons with disabilities may request this information be prepared and supplied in alternate forms by calling collect (360) 664-9009, Seattle area (206) 587-5500 (TDD or V), or outside Seattle area at 1-800-883-6388 (TDD or V).

Date: 3/25/99

Name & Job Title: John Doe, PW Contracts Mgr.

\_\_\_\_\_ (signature)

Action	Date
1. Consulting firm of <u>Acme Consulting</u> selected.	2/15/99
2. Independent cost estimate of <u>\$953,000.00</u> prepared by agency to address the following*: Develop design for Timermann Rd. Realignment from MP 53 to MP 57; including pre-engineering services of biological assessment, & NEPA/SEPA documentation.	2/25/99
3. Meeting held with consultant to ensure thorough understanding of the scope of work.	2/20/99
4. Consultant provided scope of work; request for proposal solicited.	2/15/99
5. Consultant submitted proposal in the amount of <u>\$ 1,203,000.00</u> .	2/27/99
6. Agency compared proposal with independent estimate and negotiation objectives were established.	3/3/99
7. Agency negotiator contacted/ met with the consultant and identified the following as items which needed revision (i.e., excessive or insufficient principal/ management involvement, high overhead,   unallowable costs).** Mark-ups on two subconsultants for environmental work not allowable; overhead rate of 35% too high based on nature of the work and degree of risk; consultant management & principal attendance redundant at meetings; subconsultant time excessive*	3/5/99
8. Agency revised detailed cost estimate based on negotiations.**	3/15/99
9. Consultant submitted revised proposal with following changes: ** Removed \$53,000 in subconsultant mark-ups; overhead rate reduced to 26%; reduced management attendance with principal to 2 meetings.*	3/20/99
10. Agency accepted final fee proposal of <u>\$1,000,000.00</u> to address the following: Develop design for Timermann Rd. Realignment from MP 53 to MP 57; including pre-engineering services of biological assessment, and NEPA/SEPA documentation to be completed by <u>Ace Engineering Services</u> as subconsultant.*	3/23/99
11. (or alternately) Agency could not agree to final proposal and notified the consultant in writing of this fact.	3/23/99

The negotiations were conducted in good faith to ensure the fees were fair and reasonable. The procedures outlined in the LAG manual were followed.

*\*Additional detail should be expanded upon with documentation.*

*\*\*These steps should be repeated as often as necessary, with documentation.*

*This example has been simplified and does not include the level of detail typically found in a complete record of negotiations.*

The following information must be included in agreements between non CA agencies and the consultant and is subject to approval by H&LP prior to execution:

1. Project location and termini.
2. A description of the work in sufficient detail so that an estimate of cost can be reasonably checked against the work.
3. An estimate of the total project cost.

**Note:** The above items are found in the Project Prospectus (Chapter 21).

4. A statement that the agency “does not have adequate qualified personnel to perform the additional work within the time limit.”
5. The approximate number of calendar days required by the consultant to do the work.
6. A supporting estimate showing the breakdown of work, including work-hours and average rate per work-hour, overhead and profit, and direct non-salary items that may be used during the life of the contract. This estimate should be itemized so that the selected consultant may fill out a similar estimate. Separate phases of work (i.e., preliminary engineering, construction engineering) shall be shown separately.

The estimate must be prepared using WSDOT Form 140-012, “Independent Estimate for Consulting Services” (see Forms). Show the date prepared and the signature of the person preparing the estimate. The estimate must be prepared prior to any negotiation with a consultant. The person preparing the estimate must be an agency employee or another consultant.

7. The selection procedures used in making their decision.



ACME BILLING - DESIGN CONTRACT		EFFECTIVE DATE		END DATE		TOTAL (A+B+C+D)		ACME DESIGN (labor + overhead)		ACME REIMBURSABLE (supplies, equip.)		ACME FEE (fixed or percentage)		ACME MGT. RESERVE (10% or \$50,000 max.)	
COMMENCING APRIL 1998															
ORIGINAL CONTRACT		3/5/98		4/30/99		1,000,000.00		758,207.55		95,000.00		96,792.45		50,000.00	
SUPPL 1		4/15/99		10/31/99		250,000.00		218,288.15		7,000.00		24,711.85		0.00	
SUPPL 2		10/25/99		4/30/00		0.00		0.00		0.00		0.00		0.00	
ADDL WORK AUTH 11/13/98 BY LTR.								18,235.55		4,700.00		2,064.45		(25,000.00)	
TOTAL TO DATE						1,250,000.00		994,731.25		106,700.00		123,568.75		25,000.00	
SERVICES THROUGH															
INVOICE #															
10720		4/98				9,453.86		6,740.97		1,949.76		763.13			
10753		5/98				57,702.32		49,469.30		2,632.72		5,600.30			
10770		6/98				108,129.84		92,114.98		5,586.75		10,428.11			
10998		7/98				74,985.70		65,268.39		2,328.44		7,388.87			
11205		8/98				79,551.08		67,953.63		3,904.59		7,692.86			
11336		9/98				176,664.30		137,858.93		23,198.70		15,606.67			
11530		10/98				109,515.38		93,527.78		5,399.55		10,588.05			
11782		11/98				74,011.67		52,404.73		15,674.33		5,932.61			
11937		12/98				93,734.33		74,410.44		10,900.07		8,423.82			
12146		1/99				95,229.08		82,491.66		3,398.74		9,338.68			
12319		2/99				130,894.03		116,030.99		1,727.46		13,135.58			
12563		3/99				46,706.63		37,259.95		5,228.57		4,218.11			
12695		4/99				25,879.55		21,757.14		1,659.34		2,463.07			
12833		5/99				55,842.88		43,488.74		7,430.89		4,923.25			
13037		6/99				20,954.66		17,418.99		1,311.97		2,223.70			
13220		7/99				8,115.18		5,855.60		1,512.05		747.53			
13451		8/99				3,748.06		2,646.24		764.00		337.82			
14053		9/99				5,563.92		3,870.34		1,199.54		494.04			
14313		10/99				17,509.21		9,952.37		6,286.32		1,270.52			
BILLED TO DATE						1,194,191.68		980,521.17		102,093.79		111,576.72			
REMAINING TO BE BILLED						55,808.32		14,210.08		4,606.21		11,992.03		25,000.00	

\*may also use to track subconsultant expenditures



**Washington State  
Department of Transportation**

## Performance Evaluation Consultant Services

Name and Address of Consultant		Evaluation Type <input type="checkbox"/> Interim <input type="checkbox"/> Subconsultant <input type="checkbox"/> Final																					
		Control Section(s)	SR No.																				
		Project Title																					
Type of Work <input type="checkbox"/> Study <input type="checkbox"/> R/W <input type="checkbox"/> PS&E <input type="checkbox"/> Design <input type="checkbox"/> Other (Specify) _____		Agreement Number																					
Complexity of Work <input type="checkbox"/> Difficult <input type="checkbox"/> Routine	Date Agreement Approved	Type of Agreement <input type="checkbox"/> Lump Sum <input type="checkbox"/> Cost Plus Fixed Fee <input type="checkbox"/> Hourly Rate <input type="checkbox"/> Other _____																					
Amount of Original Agreement \$	Total Amount Modifications \$	Total Amount Agreement \$																					
Completion Date Including Extensions	Actual Completion Date	Actual Total Paid \$																					
Type and Extent of Subcontracting		Committed %	Met %																				
		DBE Goals	_____																				
		MBE Goals	_____																				
		WBE Goals	_____																				
		Totals	_____																				
Performance Rating Scale (From Average Score Below)																							
<table border="0" style="width:100%; text-align:center;"> <tr> <td>10</td><td>9</td><td>8</td><td>7</td><td>6</td><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td> </tr> <tr> <td colspan="2">Superior</td> <td colspan="2">Above Reqmnts</td> <td colspan="2">Meets Reqmnts</td> <td colspan="2">Below Reqmnts</td> <td colspan="2">Poor</td> </tr> </table>				10	9	8	7	6	5	4	3	2	1	Superior		Above Reqmnts		Meets Reqmnts		Below Reqmnts		Poor	
10	9	8	7	6	5	4	3	2	1														
Superior		Above Reqmnts		Meets Reqmnts		Below Reqmnts		Poor															
Criteria	Comment		Score																				
1. Negotiations Cooperative and responsive.																							
2. Cost / Budget Complete within agreement budget including supplements.																							
3. Schedule Complete within agreement schedule including supplements.																							
4. Technical Quality Met Standards.																							
5. Communications Clear, Concise Communication (Oral, written, drawings).																							
6. Management Team player. Managed subs. Accurate, timely invoices. Appropriate, periodic, accurate progress reports.																							
7. Other (Optional)																							
Total Score																							
Average Score (Total Score / Number of criteria rated)																							
Rated By (Project Manager Name and Title)	Project Manager Signature	Date																					
Rated By (Consultant Liaison Name and Title)	Consultant Liaison Signature	Date																					
Executive Review (Name and Title)	Executive Signature	Date																					

DOT Form 272-019 EF  
Revised 1/99

Distribution: Original: Consultant Administrator  
Copies: Project Manager - Consultant Liaison - Consultant

## Performance Evaluation Instructions

### How

- Form should be reviewed and discussed with the Consultant prior to contract negotiations. Establish your expectations.
- Supplementary forms are available from the Consultant Services Office which expand the considerations for each criteria (e.g. "Schedule: A. Achieved schedule; B. Prompt response to review comments; C. Adapted to changes by WSDOT; D. Notified WSDOT early, regarding schedule impactors").
- If evaluation criterion number 7, "Other" is relevant (e.g. public involvement or volume of work) that criterion must be specified and mutually agreeable in advance.
- Score accurately. A "7" is respectable; "9" is exceptional, it should be rare.

### When

#### Final Evaluation

- Always complete and distribute a performance evaluation at the point of termination of the agreement.
- See distribution at bottom of form.

#### Interim Evaluation

- Interim evaluations should be performed as follows:
  1. At phase transitions.
  2. When any project management changes occur.
  3. To alert a consultant to poor performance.
  4. Annually if none of the other conditions occur.
- Distribute as usual.

#### Subconsultant Evaluation

- For subconsultants with significant project participation (more than \$100,000) an evaluation is recommended. Ensure coordination and review with the prime consultant prior to distribution.
- Distribute similar to usual. Include prime consultant and subconsultant.

### Why

- Scores from these evaluations factor into "Past Performance" ratings, which are used to help determine selection of future consultants. Meaningful evaluations help us hire the best.

DOT Form 272-019 EF Instructions  
Revised 1/99



**Washington State  
Department of Transportation**

## Consultant Services Evaluation Supplement

Name and Address of Consultant	Evaluation Type <input type="checkbox"/> Interim <input type="checkbox"/> Subconsultant <input type="checkbox"/> Final
	Agreement Number
Project Title	
Performance Rating Scale (From Average Scores)	
10 Superior	9 Above Reqmnts
8 Above Reqmnts	7 Above Reqmnts
6 Meets Reqmnts	5 Meets Reqmnts
4 Below Reqmnts	3 Below Reqmnts
2 Below Reqmnts	1 Poor

### Negotiation and Cost / Budget Criteria

1. Negotiations	
Sub-Criteria	Score
A. Recognized WSDOT guidelines for overhead and fee.	
B. Met negotiation schedule.	
C. Open and honest communications.	
D. Willingness to compromise.	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Discussion:	

2. Cost / Budget	
Sub-Criteria	Score
A. Finished within budget, including all supplements.	
B. Appropriate level of effort.	
C. Reasonable direct, non-salary expenses.	
D.	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Discussion:	



## Schedule and Technical Quality Criteria

Name and Address of Consultant
Project Title

### 3. Schedule

Sub-Criteria	Score
A. Achieved schedule (Including all supplements).	
B. Prompt response to review comments.	
C. Adapted to changes by WSDOT.	
D. Notified WSDOT early regarding schedule "impactors."	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Discussion:	

### 4. Technical Quality

Sub-Criteria	Score
A. Work products meet standards; where "practical."	
B. Performed appropriate quality control.	
C. Responds to review comments in subsequent submission.	
D. Sought opportunities to incorporate innovative designs.	
E. Delivered "compatible" electronic files.	
F. Implemented procedures to control construction costs.	
G.	
H.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Discussion:	

## Communication and Management Criteria

Name and Address of Consultant	
Project Title	
<b>5. Communications</b>	
Sub-Criteria	Score
A. Produced clear, concise oral and written communication.	
B. Demonstrates an understanding of oral and written instructions.	
C. Communicated at intervals appropriate for the work.	
D. Respects and uses lines of communications.	
E.	
F.	
G.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Discussion:	

<b>6. Management</b>	
Sub-Criteria	Score
A. Provided creative cost control measures / ideas.	
B. Submitted appropriate, periodic, accurate progress reports.	
C. Accurate and timely invoicing.	
D. Conducted meetings efficiently.	
E. Limited the number of consultant-initiated contract modifications / supplements.	
F. Coordinated with WSDOT effectively; was a "team player."	
G. Responsiveness.	
H. Managed subconsultants effectively.	
I.	
J.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Discussion:	

### **D/M/WBE and Other Criteria**

Name and Address of Consultant
Project Title

<b>7. Other Criteria</b>	
Sub-Criteria	Score
A.	
B.	
C.	
D.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	

Discussion:

## PERSONAL SERVICES CONTRACT

It is mutually agreed between the Washington State Department of Transportation, hereinafter referred to as the "Department," and the undersigned, hereinafter referred to as the "Contractor," that:

1. The Contractor shall provide the services specified in Section 18 of this contract. The Contractor shall not be entitled to compensation for the services rendered under the terms of this contract unless and until the services are satisfactory to the Department. Any dispute relating to the quality of acceptability of the services furnished; to the acceptable fulfillment and performance of the contract on the part of the Contractor; and/or compensation due the Contractor shall be decided by the Chief Right of Way Agent, Department of Transportation. All reports called for under the terms of this contract shall become the property of and shall be retained by the Department.
2. The Department shall have the right to cancel services under the terms of this contract by giving notice by certified mail to the Contractor, and shall be liable for services at the rates specified herein, less any prior interim payments only to the date of receipt of such notice by the Contractor. Upon payment of such sums, the Department shall be discharged from all liability to the Contractor and this contract shall be terminated.
3. If, due to the Contractor's error or oversight, corrections to the services contracted for herein are necessary, the Contractor will make such corrections at no additional cost to the Department and will submit such corrections to the Department within ten (10) days of receipt of the Department's request.
4. The services to be furnished under the terms of this contract shall be performed by the Contractor and the Contractor's bona fide employees, and shall not be delegated or subcontracted to any other person or firm.
5. The Contractor warrants that it has not employed or retained any company, firm, or person, other than a bona fide employee working exclusively for the Contractor, to solicit or secure this contract; and that it has not paid or agreed to pay to any company, person or firm, other than a bona fide employee working exclusively for the Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Department shall have the right to annul this contract.
6. During the performance of this contract, the Contractor, for itself, its assigns and successors in interest, agrees as follows:
  - a. COMPLIANCE WITH LAWS AND REGULATIONS: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract. The Contractor shall comply with the State Law Against Discrimination, Chapter 49.60 RCW and any regulations adopted thereto.
  - b. NONDISCRIMINATION: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap unless based upon a bona fide occupational qualification, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Chapter 49.60 RCW or by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
  - c. SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the above grounds.
  - d. INFORMATION AND REPORTS: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, or other sources of information, and its facilities as may be determined by the State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, directives, or laws. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
  - e. SANCTIONS FOR NONCOMPLIANCE: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate including but not limited to:
    - (1) withholding of payments to the contract until the contractor complies, and/or
    - (2) cancellation, termination or suspension of the contract, in whole or in part.
  - f. INCORPORATION OF PROVISIONS: The Contractor shall include the provisions of paragraphs a through e in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the State Department of Transportation or the Federal Highway Administration



may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the State Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The Contractor warrants that, if it is fully or partially employed by any public agency other than the Department, its acceptance of this contract is with the consent of such agency; that the Contractor shall spend no time in the performance required in this contract during which time the Contractor would normally be employed and paid by such agency; and that the acceptance of this contract will not interfere with any obligations the Contractor may have to such agency.
8. The Contractor agrees to indemnify, defend and hold the State and its officers and employees harmless from and shall process and defend all its own expense all claims, demands or suits at law or equity arising out of this Agreement and/or the Contractor's and/or its subcontractor's performance or failure to perform any and all duties prescribed by the Agreement; provided that nothing herein shall require the Contractor to indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the conduct of the State, its officers or employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Contractor's agents or employees and (b) the State, its agents, officers and employees, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the Contractor's negligence or the negligence of the Contractor's agents or employees.
9. The Contractor agrees that any duly authorized representative of the Department or of the Federal Highway Administration in the official conduct of its business shall have access to and the right to examine any directly pertinent books, documents, papers, photographic negatives, and records of the Contractor involving the services provided under the terms of this contract at any time during normal business hours during the life of this contract and for three years after the date of the final payment under this contract.
10. The Department is contracting for the Contractor's independent performance of the specified services. Should the Department employ another contractor to perform the same services, the Contractor shall not discuss or otherwise exchange information with such other contractor.
11. The Contractor will not commence work under this contract, or any revision thereto, until a commencement date is provided in writing by the Department. Billings for services performed prior to the said commencement date will not be honored.
12. In the performance of the services under this contract, the Contractor shall comply with all applicable Departmental regulations, State and Federal laws, regulations and procedures.
13. The Contractor shall remove any employee from assignment to perform services under this contract immediately upon receipt of written request to do so from the Department's Chief Right of Way Agent.
14. The Contractor shall comply with the Federal Fair Labor Standards Act and any other legislation affecting its employees and the rules and regulations issued thereunder; and shall save the Department free, clear and harmless from all actions, claims, demands and expenses arising out of said Act and any rules and regulations that are or may be promulgated in connection therewith.
15. The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income or any other form of taxes fees, licenses, excises, or payments required by any Federal or State legislation which are now or which may be enacted during the term of this contract as to all the Contractor's employees, and as to all the duties, activities, and requirements of the Contractor in the performance of this contract.
16. Upon completion or termination of this contract, the Contractor shall turn over all documents, records and file materials to the Department.
17. The services required under this contract are in connection with the following project:  
Project No.: \_\_\_\_\_ ; Title: \_\_\_\_\_  
Federal Aid No.: \_\_\_\_\_ ; Charge No.: \_\_\_\_\_
18. The Contractor shall provide the following described services under the terms of this contract:

19. The Contractor shall be paid \_\_\_\_\_ dollars (\$ \_\_\_\_\_ )  
for all services and expenses under this contract; provided that the total reimbursement under this contract shall not exceed \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ).  
Such payment shall include all the Contractor's expenses in the performance of this contract unless otherwise specified in Section 25. The Contractor's invoice shall include: the project title, parcel numbers, description of the service rendered, the number of days or partial days allocable to each parcel, and the dates worked.
20. The project for which the services of the Contractor are required may involve litigation of claims against or brought by the State. All work performed by the Contractor is strictly confidential. No disclosure of the work performed by the Contractor shall be permitted without the prior express consent of the Department. The services to be performed

under this contract do not include services as an expert witness; in the event of the commencement of litigation, services as an expert witness would be the subject of a separate agreement.

21. The Contractor shall satisfactorily complete the services contracted for herein on or before \_\_\_\_\_. On said date this contract shall terminate. Billings for services performed after the said termination date will not be honored.
22. Revisions to this contract may be made only by the mutual agreement of both parties to this contract to execute a Contract Revision.
23. To assist the Contractor in fulfilling the termination of this contract, the Department will furnish the following:
24. The Appraisal Program Manager, Joseph H. Granger, (206)753-6239, will supervise the performance of this contract and is the Contractor's contact with the Department in all matters pertaining to this contract.
25. Special provisions:
26. This Personal Service Contract is hereby tendered and the terms and obligations hereof shall not become binding on the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, Department of Transportation, by the Secretary of Transportation or his duly authorized representative.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Approved as to form:

**CONTRACTOR**

\_\_\_\_\_/S/\_\_\_\_\_  
Assistant Attorney General, 10-26-81  
Date

Contract proposed by:

By \_\_\_\_\_

\_\_\_\_\_  
Appraisal Program Manager, WSDOT Date

Title \_\_\_\_\_

Accepted and Approved:  
**WASHINGTON STATE**  
**DEPARTMENT OF TRANSPORTATION**

Typed Name \_\_\_\_\_

Address \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Phone \_\_\_\_\_ Tax ID Number \_\_\_\_\_

Date \_\_\_\_\_

Contract Number \_\_\_\_\_

Federal Aid No. \_\_\_\_\_

**CONSULTANT AGREEMENT FOR NEGOTIATION SERVICES**

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, by and between the CITY/COUNTY of \_\_\_\_\_, WASHINGTON, hereinafter called the "AGENCY," and the consulting firm of \_\_\_\_\_

\_\_\_\_\_ whose address is \_\_\_\_\_, the location in Washington State at which work will be available for inspection, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY has not sufficient qualified employees to accomplish the Right-of-Way Acquisition and Relocation Services on this proposed contract and the AGENCY deems it advisable and is desirous of engaging the professional services and assistance of a qualified consulting firm to provide the necessary acquisition services, and

WHEREAS, the CONSULTANT has indicated that he desires to do the work set forth in the Agreement upon the terms and conditions set forth herein.

NOT, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein below, the parties hereto agree as follows:

**I**

**PROJECT IDENTIFICATION**

The project is entitled: \_\_\_\_\_. The property is located in \_\_\_\_\_ (Section, Township, and Range). The project consists of \_\_\_\_\_ parcel(s) of real property to be acquired for highway purposes, and as shown on the AGENCY right-of-way plans which is made reference to and made a part of this contract.

**II**

**SCOPE OF WORK**

The CONSULTANT shall acquire on behalf of the AGENCY the real property referenced in Section I of this Agreement, using procedures specified by the AGENCY and in accordance with the Washington State Department of Transportation *Right-of-Way Manual*, which by this reference is made a part of this Agreement.

The service rendered by the CONSULTANT shall be as follows:

**A. APPRAISAL:**

The CONSULTANT shall furnish appraisals on all parcels in the project to the AGENCY. The AGENCY shall provide for appraisal review. The appraisals will conform to the form shown in *LOCAL AGENCY GUIDELINES MANUAL*, WASHINGTON STATE DEPARTMENT OF TRANSPORTATION which by reference is made a part of this Agreement.

(If appraisal is not to be included in Agreement, then strike out.)

**B. ACQUISITION:**

Upon notification and receipt of Determination of Value from the AGENCY, the CONSULTANT will commence negotiations. If it becomes apparent that negotiations have reached an impasse and sufficient time has passed for the property owner to make a settlement decision, then the CONSULTANT shall provide the AGENCY with written notification. The filing of condemnation proceedings shall be the responsibility of the AGENCY.

Upon completion of negotiations with property owners and clearing of all lien encumbrances, the CONSULTANT shall transmit to the AGENCY all instruments, including payment vouchers, for their acceptance or rejection. The recording of instruments and payment to property owner will be the responsibility of the AGENCY.

**C. RELOCATION ASSISTANCE:**

The Contractor will provide relocation assistance services to all displacees on the project in accordance with state and federal standards, and as directed by the County.

III  
OBLIGATIONS OF CONSULTANT

- A. CONSULTANT shall prepare all documents necessary to convey to the AGENCY, valid title to the needed rights-of-way and report the results of negotiations, working time, and business expense on the project.
- B. CONSULTANT shall assure that no less than three personal contacts are made with each interested party (owner) in order to acquire valid title to needed property rights as shown on the project map or as instructed in writing by the AGENCY.
- C. CONSULTANT shall on the first (but no later than the second) contact explain the AGENCY's offer orally and in writing and request execution of appropriate conveyance by the owner to the AGENCY of needed rights-of-way in consideration of the amount of the offer made.
- D. CONSULTANT shall assure that negotiations shall be performed only to the limit of authority delineated by the title reports, project maps, determination of fair market value, manual of procedures, acquisition schedule, or written instructions issued by the AGENCY.
- E. CONSULTANT shall assure that a complete, legible diary of each contact to include the time, place, amount of offer, to whom offer was made, all parties present, and owner's response in a form furnished by the AGENCY and to be returned to the AGENCY for permanent records.
- F. CONSULTANT shall attempt to obtain release of all liens of encumbrances necessary to vest valid title to required property rights in the AGENCY, however, such liens or encumbrances that cannot be released, the CONSULTANT shall notify the AGENCY in writing for instructions.
- G. CONSULTANT on or before project cut-off date shall furnish transmittal of diary, miscellaneous correspondence, vouchers, and valid conveyances pursuant to all negotiated transactions or written recommendations pursuant to future negotiations in those cases where settlement failed. All work shall be submitted as completed to the AGENCY for acceptance or rejections.
- H. CONSULTANT shall provide relocation assistance to persons or businesses that will be displaced, computing relocation benefits, monitoring progress of individual relocations, and work within the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act.
- I. CONSULTANT shall work such days and hours as may be necessary to meet with interested property owners that may not be available during regular working days or hours.
- J. CONSULTANT shall abide by decisions made by the AGENCY on questions concerning acceptability of work performed on the project. All decisions made by the AGENCY are final.
- K. CONSULTANT shall correct any deficient work performed by him or his employees on the project and deliver corrected work to the AGENCY at his own expense. Corrected work shall be delivered to the AGENCY within \_\_\_\_\_ days from the date of request.
- L. CONSULTANT shall remove any employee from assignment to this project immediately upon written request by the AGENCY.
- M. The CONSULTANT agrees to make available for inspection and audit all records of this Agreement to the AGENCY, state, and federal governments at any time during the term of this Agreement and for a period of three years from the date of final payment.
- N. CONSULTANT shall be available for consultation with AGENCY, state, and federal representatives after completion of this Agreement should the need arise.

Note: Either of the following two (2) sentences should be added:

- 1. Said consultation shall be a part of this Agreement if it has to do with explanation of costs and settlement and be of no further cost to the AGENCY.
- 2. Said consultation shall be contracted for by separate agreement if it involves litigation.

Note: If appraisals are being subcontracted for then, agreement should state the name and address of firm or individual, amount of contract, and show amount (charge) for each parcel.

IV  
OBLIGATIONS OF AGENCY

- A. AGENCY shall furnish applicable manuals of procedures, appropriate policy directives concerning procedures or expense reimbursement, deviating instructions in writing, acquisition schedule, title reports, appraisals, determinations of fair market value, project maps, engineering data, all printed forms for conveyancing or reporting negotiated transactions or recommendations according to AGENCY procedures.

(If any of the above are to be part of CONSULTANTS obligations then remove.)

- B. The AGENCY shall furnish final decisions in writing on questions not covered by the above material.
- C. The AGENCY shall review and accept (approved) or reject any work performed by the CONSULTANT on the project in ten (10) days or less from the date of receipt by the AGENCY.
- D. The AGENCY shall provide the following for use by the CONSULTANT in the acquisition of rights-of-way for this project:
1. Office spaces.
  2. Telephone.
  3. Typing and duplicating equipment.
  4. Stationery.
  5. Postage.

(The above paragraph may not be included; if so, remove.)

V  
COMPENSATION

- A. The CONSULTANT shall be paid on a     (day/mo)     basis for work satisfactorily completed based upon the following specified rates and such rates will be applicable throughout the life of the Agreement.

Project Manager	\$_____ per (hr/day/month)
Negotiator (acquisition agent)	\$_____ per (hr/day/month)
Appraiser (eliminate appraiser if not part of agreement)	\$_____ per parcel
Relocation Agent	\$_____ per (hr/day/month)
Meals and Lodging	Actual expense not to exceed State of Washington's per diem expense.
Travel	As authorized by Agency in writing.
Mileage (automobile)	\$_____ per mile for on job costs
Miscellaneous	Actual expense, such as parking, ferry charges, photo copy costs, long distance phone costs, etc.

- B. The CONSULTANT shall on or before the \_\_\_\_\_ day of each month, invoice the AGENCY for services rendered during the previous month identifying the project, parcels worked on, and days worked. CONSULTANT will also provide a written progress report on this project on a monthly basis.
- C. The total reimbursement of compensation and expenses for services under provisions of this Agreement is estimated to be: \$\_\_\_\_\_. The amount shall not be exceeded without execution of an amendment to this Agreement.

Reimbursement is based on the following:

Photographs	\$ _____
Research Property Owners Address	\$ _____
Prepare and Mail Preacquisition Letters	\$ _____
Prepare and Deliver Formal Offer Letters	\$ _____
Prepare Legal Descriptions	\$ _____
Negotiation Labor	\$ _____
Appraisal	\$ _____
Relocation Services	\$ _____
Processing	\$ _____
Prepare Conveyance Documents	\$ _____
Misc. Meetings and Progress Reports	\$ _____
TOTAL	\$ _____

(Portions not needed should be eliminated.)

#### VI

##### TIME OF BEGINNING AND COMPLETION

- A. The CONSULTANT shall not begin work under the terms of this Agreement until authorized in writing by the AGENCY. The time required, in calendar days, for completion of all work under this Agreement shall be \_\_\_\_\_ days following written authorization to begin.

Established completion time shall not be extended because of any unwarranted delays attributable to the CONSULTANT, but may be extended by the AGENCY or because of unavoidable delays caused by an act of God or governmental actions or other conditions beyond the control of the CONSULTANT.

- B. Upon completion of this Agreement all documents and records shall be turned over to the AGENCY.

#### VII

##### AMENDMENTS AND REVISIONS

Should the AGENCY make changes within the scope of this Agreement by giving notice to CONSULTANT and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of this Agreement, an appropriate adjustment shall be made. No change by CONSULTANT shall be recognized without written approval by the AGENCY. Nothing in this article shall excuse CONSULTANT from proceeding with performance of the Agreement as changed hereunder. All changes shall be submitted as an amendment to the basic Agreement and approved by the State of Washington, Department of Transportation, before the work is undertaken in order to become eligible for federal participation.

#### VIII

##### ASSIGNMENT OF AGREEMENT

CONSULTANT shall not assign this Agreement in whole or in part, nor shall CONSULTANT subcontract any of the work to be performed herein without the prior written consent of the AGENCY.

#### IX

##### TERMINATION OF CONTRACT

- A. Agency may terminate this contract by notifying CONSULTANT \_\_\_\_\_ days in advance of termination in writing by Certified Mail of its intentions so to do at any time and for any reason whatsoever. In the event of such termination, AGENCY shall be obligated to reimburse CONSULTANT for services performed and expenses incurred to date of termination at the rates set forth under Articles \_\_\_\_\_ and \_\_\_\_\_ herein, less prior interim payments, if any. Upon payment of such sums, AGENCY shall be discharged from all liability to the CONSULTANT hereunder and this Agreement shall be considered terminated unless extended in writing by mutual agreement between the parties hereto.
- B. Upon termination of contract under Paragraph A above, all documents, records, and file materials shall be turned over to the AGENCY by the CONSULTANT.
- C. All services to be rendered under this contract shall be subject to direction and approval of the AGENCY.

X  
EMPLOYMENT

The CONSULTANT warrants that he had not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the AGENCY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT, while engaged in the performance of any work or services required by the CONSULTANT under this Agreement, shall be considered employees of the CONSULTANT only and not of the AGENCY and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged and any and all claims made by a third party as a consequence of any negligent act or omission on the part of the CONSULTANT's employees, while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part-time basis, or other basis, during the period of the Agreement, any professional or technical personnel who are, or have been at any time during the period of this Agreement, in the employ of the FHWA, state, or AGENCY, except regularly retired employees, without written consent of the public employer of such person.

If during the time period of this Agreement, the CONSULTANT finds it necessary to increase his professional, technical, or clerical staff as a result of this work, he will actively solicit minorities through his advertisement and interview process.

During the performance of this Agreement, the CONSULTANT, for itself, its assignees, and successors in interest, hereinafter referred to as the CONSULTANT, agrees as follows:

- A. **COMPLIANCE WITH REGULATIONS:** The CONSULTANT will comply with the regulation of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations, which are herein incorporated by reference and made a part of this Agreement.
- B. **NONDISCRIMINATION:** The CONSULTANT, with regard to the work performed by it, will not discriminate on the grounds of race, religion, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix A-11 of the Regulations.
- C. **SOLICITATION FOR SUBCONTRACTORS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations, either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, religion, color, national origin, or sex.
- D. **INFORMATION AND REPORTS:** The CONSULTANT will provide all information and reports required by the Regulations, or orders and instruction issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required by a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY or the FHWA as appropriate and shall set forth what efforts it has made to obtain the information.
- E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the discrimination provisions of this contract, the AGENCY shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or
  - 2. Cancellation, termination, or suspension of the contract in whole or part.



- F. **INCORPORATION OF PROVISIONS:** The CONSULTANT will include the provisions of paragraph (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The CONSULTANT will take action with respect to any subcontract or procurement as the AGENCY or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; PROVIDED, HOWEVER, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

#### XI INSURANCE

Prior to beginning work under this Agreement, CONSULTANT shall provide evidence that policies providing the following coverage and limits of insurance are in full force and effect.

1. **GENERAL COMPREHENSIVE LIABILITY:** With respect to liability for injuries to or death of persons and with respect to liability for destruction of or damage to property, the insurance coverage shall be \$500,000 combined single limit and such coverage shall include the special provisions listed below:
  - a. The AGENCY shall be as an additional insured and the coverage shall be applicable to and protect the AGENCY from liability arising from or relating to CONSULTANT's activities relating to this Agreement. Such insurance shall be primary and other insurance maintained or carried by the AGENCY shall be separate and distinct and shall not be contributing with the insurance listed hereunder.
  - b. Such insurance shall include a "Cross Liability" or "Severability of Interest" clause.
  - c. Such insurance shall not include explosion, collapse, or underground exclusions commonly referred to as the "XCU" hazards.
2. **AUTOMOBILE COMPREHENSIVE LIABILITY:** With respect to liability for injury to or death of persons and with respect to liability for destruction of or damage to property, the AGENCY shall be insured and the insurance coverage shall be \$500,000 combined single limit. Such insurance shall be primary and other insurance maintained or carried by the AGENCY shall be separate and distinct and shall not be contributing with the insurance listed hereunder.

Failure of either or all of the insured to report a claim under such insurance shall not prejudice the rights of the AGENCY thereunder. The AGENCY will have no obligation for the payments of premiums because of its being an insured under such insurance. None of the policies issued pursuant to the requirements contained herein shall be cancelled, allowed to expire, or changed in any manner so as to affect the rights of the AGENCY thereunder until thirty (30) days after written notice of such intended cancellation, expiration, or change.

#### XII WAGE AND HOURS LAW COMPLIANCE

CONSULTANT shall comply with all applicable provisions of the Fair Labor Standards Act and any other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the AGENCY free, clear, and harmless from all actions, claims, and expenses arising out of said Act and rules and regulations that are or may be promulgated in connection herewith.

#### XIII SOCIAL SECURITY AND OTHER TAXES

CONSULTANT assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fee, licenses, excises, or payments required by any city, county, federal, or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the CONSULTANT and as to all duties, activities, and requirements by the CONSULTANT in performance of the work on this project and under this contract and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations.

#### XIV DAMAGE CLAIMS

CONSULTANT shall indemnify and hold harmless the AGENCY from and against all claims for any and all damage, including but not limited to claims for damage to property or claims of misrepresentation in negotiations, due to negligence of the CONSULTANT or its employees including court costs and attorney's fees, if any.

XV  
CONTENT AND UNDERSTANDING

This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement, or negotiation whether oral or written not set forth herein or in written amendments hereto duly executed by both parties.

XVI  
ATTORNEY'S FEES

If the AGENCY brings any action or suit relating to the enforcement of this Agreement or asking for any relief against CONSULTANT, declaratory or otherwise, arising out of this Agreement or if CONSULTANT brings any action or suit against the AGENCY, declaratory or otherwise, arising out of this Agreement, then the prevailing party in any of these events shall be paid its reasonable attorney's fees and costs and expenses expended or incurred in connection with any such suit or action.

XVII  
INDEPENDENT CONTRACTOR

The CONSULTANT shall at all times be an independent contractor and not an employee of the AGENCY, and shall not be entitled to compensation or benefits of any kind except as specifically provided for herein.

XVIII  
NOTICES

Any notice given by either party to the other hereunder shall be served, if delivered in person, to the office of the representative authorized and designated in writing to act for the respective party, or if deposited in the mail, properly stamped with the required postage and addressed to the office of such representative as indicated in this Agreement. Either party hereto shall have the right to change any representative or address it may have given to the other party by giving such other party due notice in writing of such change.

XIX  
CONFLICT OF INTEREST

The CONSULTANT hereby affirms that he has no present or contemplated future personal interest in the property, which is the subject matter of this Agreement.

XX  
GOVERNING LAW

This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Washington.

XXI  
AUTHORIZED REPRESENTATIVE

In performing the services defined herein, CONSULTANT shall report to:

Telephone Number  
CONSULTANT's Representative is:  
Telephone Number

XXII  
APPROVAL OF AGREEMENT

This Agreement shall become effective upon execution by the parties hereto.

\_\_\_\_\_  
(Consultant's Name)

\_\_\_\_\_  
(Agency)

By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Title)

APPROVED FOR USE:

APPROVED AS TO FORM:

\_\_\_\_\_  
Director of Real Estate Services  
Washington State Department  
of Transportation

\_\_\_\_\_  
(Agency Title)

DOT Form 140-012 EF  
Revised 9/98

<b>Local Agency Standard Consultant Agreement</b>		Consultant/Address/Telephone	
Agreement Number		Project Title And Work Description	
Federal Aid Number			
Agreement Type (Choose one) <input type="checkbox"/> <b>Lump Sum</b> Lump Sum Amount \$ _____ <input type="checkbox"/> <b>Cost Plus Fixed Fee</b> Overhead Progress Payment Rate _____ % Overhead Cost Method _____ <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input type="checkbox"/> Fixed Rate _____ % Fixed Fee \$ _____ <input type="checkbox"/> <b>Specific Rates Of Pay</b> <input type="checkbox"/> Negotiated Hourly Rate <input type="checkbox"/> Provisional Hourly Rate <input type="checkbox"/> <b>Cost Per Unit of Work</b>			
		Do you require a 1099 for IRS? <input type="checkbox"/> Yes <input type="checkbox"/> No	Completion Date
		Total Amount Authorized \$ _____	
		Management Reserve Fund \$ _____	
		Maximum Amount Payable \$ _____	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the Local Agency of \_\_\_\_\_, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

**WITNESSETH THAT:**

**WHEREAS**, the AGENCY desires to accomplish the above referenced project, and

**WHEREAS**, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

**WHEREAS**, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## **I GENERAL DESCRIPTION OF WORK**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

## **II SCOPE OF WORK**

The Scope of Work and project level of effort for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT.

## **III GENERAL REQUIREMENTS**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the AGENCY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice – required shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "B" attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE) and Women Owned Business Enterprises (WBE) if required shall be shown in the heading of this AGREEMENT.

All reports, PS&E materials, and other data, furnished to the CONSULTANT by the AGENCY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the AGENCY. Reuse by the AGENCY or by others acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

## **IV TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY, in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

## **V PAYMENT**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "C" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

## **VI SUBCONTRACTING**

The AGENCY permits subcontracts for those items of work as shown in Exhibit G to this Agreement.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit G, attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and subcontractor, any contract or any other relationship.

## **VII EMPLOYMENT**

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered

employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

## **VIII NONDISCRIMINATION**

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the AGENCY and further that the CONSULTANT shall be barred from performing any services for the AGENCY now or in the future unless a showing is made satisfactory to the AGENCY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in the same manner as in Federal-assisted programs of the



Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT. The consultant shall comply with the American Disabilities Act of 1992, as amended.

- B. **NONDISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclu-

sive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the AGENCY, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the AGENCY shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
  2. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- F. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the AGENCY or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. **UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180.

## **IX TERMINATION OF AGREEMENT**

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit F for the type of AGREEMENT used.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination; the cost to the AGENCY of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or it's employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X CHANGES OF WORK**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## **XI DISPUTES**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review.

## **XII VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county the AGENCY is located in. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located in.

## **XIII LEGAL RELATIONS AND INSURANCE**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE, and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided

that nothing herein shall require a CONSULTANT to indemnify the AGENCY and the STATE against and hold harmless the AGENCY and the STATE from claims, demands or suits based solely upon the conduct of the AGENCY and the STATE, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the AGENCY and the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the AGENCY and the STATE of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. General commercial liability insurance in an amount not less than a single limit of one million and 00/100 Dollars (\$1,000,000.00) for bodily injury, including death and property damage per occurrence.

Excepting the Worker's Compensation insurance and any professional liability insurance secured by the CONSULTANT, the AGENCY will be named on all certificates of insurance as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within 14 days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million dollars, whichever is the greater unless modified by Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

### **XIV EXTRA WORK**

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within 30 days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

### **XV ENDORSEMENT OF PLANS**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI  
FEDERAL AND STATE REVIEW**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

**XVII  
CERTIFICATION OF THE CONSULTANT  
AND THE AGENCY**

Attached hereto as Exhibit "A-1", are the Certifications of the Consultant and the Agency, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying, and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in Agreements over \$100,000.

**XVIII  
COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX  
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

By \_\_\_\_\_ By \_\_\_\_\_

Consultant \_\_\_\_\_ Agency \_\_\_\_\_

**Exhibit A-1**  
**Certification Of Consultant**

Project No. \_\_\_\_\_

Local Agency \_\_\_\_\_

I hereby certify that I am \_\_\_\_\_ and duly authorized  
representative of the firm of \_\_\_\_\_ whose address is  
\_\_\_\_\_ and that neither I nor the above  
firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or to retain the services of any firm or person in connection with carrying out the contract.
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any):

I further certify that the firm I hereby represent is authorized to do business in the State of Washington and that the firm is in full compliance with the requirements of the board of Professional Registration.

I acknowledge that this certificate is to be available to the State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal aid funds and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Certification of Agency Official**

I hereby certify that I am the AGENCY Official of the Local Agency of \_\_\_\_\_ Washington and that the above consulting firm or their representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledged that this certificate is to be available to the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal aid highway funds and it subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Exhibit A-2**  
**Certification Regarding Debarment, Suspension, and Other Responsibility**  
**Matters-Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): \_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature) President or Authorized Official of Consultant



**Exhibit A-3**  
**Certification Regarding The Restrictions**  
**of The use of Federal Funds for Lobbying**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Consultant (Firm): \_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature) President or Authorized Official of Consultant

**Exhibit A-4**  
**Certificate of Current Cost or Pricing Data**

This is to verify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of \_\_\_\_\_

\* are accurate, complete, and current as of \_\_\_\_\_. \*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date of Execution\*\*\* \_\_\_\_\_

\* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

## Exhibit B-1

### Scope of Work

Project No. \_\_\_\_\_

[illegible]

### Documents To Be Furnished By The Consultant

This image shows a blank sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and extend across the width of the page, typical of notebook paper. There are no margins, text, or other markings on the page.

**Exhibit B-2  
Scope of Work  
(Task Order Agreement)**

Each item of work under this AGREEMENT will be provided by task assignment. Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the AGENCY. The AGENCY is not obligated to assign any specific number of tasks to the CONSULTANT, and the AGENCY'S and CONSULTANT'S obligations hereunder are limited to tasks assigned in writing. Task assignments may include but are not limited to, the following types of work:

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
- F. \_\_\_\_\_

Task assignments made by the AGENCY shall be issued in writing by a Formal Task Assignment Document similar in format to page 2 of this exhibit.

An assignment shall become effective when a formal Task Assignment Document is signed by the CONSULTANT and the AGENCY, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorization shall be followed up with a Formal Task Assignment Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the AGREEMENT) shall be provisional and subject to final negotiation and acceptance by the AGENCY.

### **Formal Task Assignment Document**

Task Number \_\_\_\_\_

The general provisions and clauses of Agreement \_\_\_\_\_ shall be in full force and effect for this Task Assignment

Location of Project: \_\_\_\_\_

Project Title: \_\_\_\_\_

Maximum Amount Payable Per Task Assignment: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Description of Work:  
(Note attachments and give brief description)

Agency Project Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Oral Authorization Date: \_\_\_\_\_ See Letter Dated: \_\_\_\_\_

Consultant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Agency Approving Authority: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit C-1**  
**Payment**  
**(Lump Sum)**

**A. Lump Sum Agreement**

Payment for all consulting services for this project shall be on the basis of a lump sum amount as shown in the heading of the AGREEMENT.

**1. Management Reserve Fund**

The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Lump Sum Amount as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of the AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work."

**2. Maximum Total Amount Payable**

The Maximum Total Amount Payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT. The maximum total amount payable is comprised of the Lump Sum Amount and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."

**B. Monthly Progress Payments**

Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed, and are not to be more frequent than one (1) per month. To provide a means of verifying the invoiced salary costs for the Consultant's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate, and present duties of those employees performing work on the PROJECT at the time of the interview.

**C. Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

It is agreed that payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT agrees to refund such overpayment to the AGENCY within ninety (90) days of notice of any such payment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment.

**D. Inspection of Cost Records**

The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the AGENCY, the STATE, and the United States for a period of three years after final payment the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is complete.



**Exhibit C-2**  
**Payment**  
**(Cost Plus Fixed Fee)**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for all work performed or services rendered and for all labor, materials, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform with the applicable portion of 48 CFR 31.

**A. Actual Costs**

Payment for all consulting services for this project shall be on the basis of the CONSULTANT's actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, and direct nonsalary cost.

**1. Direct Salary Costs**

The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT.

**2. Overhead Costs**

Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT, under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The three options are explained as follows:

- a. **Actual Cost Not To Exceed Maximum Percent:** If this method is indicated in the heading of this AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT at the actual overhead rate verified by audit up to the maximum percentage shown in the space provided. Final overhead payment when accumulated with all other actual costs shall not exceed the total maximum amount payable shown in the heading of this AGREEMENT.
- b. **Fixed Rate:** If this method is indicated in the heading of the AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.

A summary of the CONSULTANT's cost estimate and the overhead computation are attached hereto as Exhibit D-1 and by this reference made part of this AGREEMENT. When an Actual Cost method, or the Actual Cost Not To Exceed method is used, the CONSULTANT (prime and all subconsultants) will submit to the AGENCY within three months after the end of each firm's fiscal year, an overhead schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

**Failure to supply this information by either the prime consultant or any of the subconsultants shall cause the agency to withhold payment of the billed overhead costs until such time as the required information is received and an overhead rate for billing purposes is approved.**

The STATE and/or the Federal Government may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

**3. Direct Nonsalary Costs**

Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the AGENCY. Automobile mileage for travel will be reimbursed at the current rate approved for AGENCY employees and shall be supported by the date and time of each trip with origin and destination of such trips. Subsistence and lodging expenses will be reimbursed at the same rate as for AGENCY employees. The billing for nonsalary cost, directly identifiable with the Project, shall be an itemized listing of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be provided to the AGENCY upon request. All of the above charges must be necessary for the services to be provided under this AGREEMENT.

**4. Fixed Fee**

The fixed fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional fixed fee which could be authorized from the Management Reserve Fund. This fee is based on the scope of work defined in this AGREEMENT and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provisions for the added costs and an appropriate additional fee. The fixed fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices.

Any portion of the fixed fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX, Termination of Agreement.

**5. Management Reserve Fund**

The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this agreement. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work."

**6. Maximum Total Amount Payable**

The maximum total amount payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT.

The Maximum Total Amount Payable is comprised of the Total Amount Authorized, which includes the Fixed Fee and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."

**B. Monthly Progress Payments**

The CONSULTANT may submit invoices to the AGENCY for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, General Requirements, of this AGREEMENT. The invoices will be supported by an itemized listing for each item including direct salary, direct nonsalary, and allowable overhead costs to which will be added the prorated Fixed Fee. To provide a means of verifying the invoiced salary costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, and present duties of those employees performing work on the PROJECT at the time of the interview.

**C. Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims. The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within ninety (90) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment.

**D. Inspection of Cost Records**

The CONSULTANT and the subconsultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**Exhibit C-3**  
**Payment**  
**(Negotiated Hourly Rate)**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

**1. Hourly Rates**

The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits D and E attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first 12-month period and shall be subject to negotiation for the following 12-month period upon request of the CONSULTANT or the AGENCY. If negotiations are not conducted for the second or subsequent 12-month periods within 90 days after completion of the previous period, the rates listed in this AGREEMENT or subsequent written authorization(s) from the AGENCY shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee.

In the event renegotiation of the hourly rates is conducted, the AGENCY reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT'S fixed hourly rates may include salary or overhead adjustments.

**2. Direct Nonsalary Costs**

Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the AGENCY. Automobile mileage for travel will be reimbursed as the current rate approved for AGENCY employees and shall be supported by the date and time of each trip with origin and designation of such trips. Subsistence and lodging expenses will be reimbursed at the same rate as for AGENCY employees. The billing for nonsalary cost, directly identifiable with the PROJECT, shall be an itemized listing of the charges supported by the original bills, invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

**3. Management Reserve Fund**

The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this agreement. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work."

**4. Maximum Amount Payable**

The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.

**5. Monthly Progress Payments**

Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibits D and E, including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the consultant's employees, the agency may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the project at the time of the interview.

**6. Inspection of Cost Records**

The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the AGENCY, STATE, and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with following exception: if any litigation, claim, or audit is started before the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The three-year retention period begins when the CONSULTANT receives final payment.

**7. Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within ninety (90) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the AGENCY of overpayment.

**Exhibit C-4**  
**Payment**  
**(Provisional Hourly Rate)**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

**1. Hourly Rates**

The CONSULTANT shall be paid by the AGENCY for work done, based upon the provisional hourly rates shown in Exhibits D and E attached hereto and by this reference made part of this AGREEMENT. The actual hourly rates will be determined by an audit of 19XX and/or 19XX cost data. The provisional rates listed shall be utilized until the results of the audit are known and will be retroactively adjusted to reflect actual costs. The provisional and/or audited rates listed shall be applicable for the first 12-month period and shall be subject to negotiation for the following 12-month period upon request of the CONSULTANT or the AGENCY. If negotiations are not conducted for the second or subsequent 12-month periods within 90 days after completion of the previous period, the rates listed in this AGREEMENT or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee.

In the event renegotiation of the hourly rates is conducted, the AGENCY reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT'S fixed hourly rates may include salary or overhead adjustments.

**2. Direct Nonsalary Costs**

Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the AGENCY. Automobile mileage for travel will be reimbursed as the current rate approved for AGENCY employees and shall be supported by the date and time of each trip with origin and designation of such trips. Subsistence and lodging expenses will be reimbursed at the same rate as for AGENCY employees. The billing for nonsalary cost, directly identifiable with the PROJECT, shall be an itemized listing of the charges supported by the original bills, invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

**3. Management Reserve Fund**

The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this agreement. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work."

**4. Maximum Amount Payable**

The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.

**5. Monthly Progress Payments**

Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibits D and E, including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the agency may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the PROJECT at the time of the interview.

**6. Inspection of Cost Records**

The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the AGENCY, STATE, and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit is started before the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The three-year retention period begins when the CONSULTANT receives final payment.

**7. Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any items and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the agency within ninety (90) days of notice of the overpayment. Such refund shall not constitute a waiver by the consultant or any claims relating to the validity of a finding by the state of overpayment.

**Exhibit C-5**  
**Payment**  
**(Cost Per Unit Of Work)**

1. When the AGENCY requests that a project be undertaken, the CONSULTANT shall prepare a fee proposal based upon a typical scope of work. Upon agreement by the AGENCY and the CONSULTANT upon a scope of work and related fee, a maximum encumbrance, inclusive of expenses, will be established, to serve as a maximum amount payable for the project. For accounting purposes, the CONSULTANT will be paid by the AGENCY for work done, based upon mutually agreed unit rates for work defined in Exhibits D and E. The listed rates shall be applicable throughout the life of this AGREEMENT. The rates are inclusive of actual salaries, overhead, profit, tools, materials, and equipment necessary or incidental for the completion of the AGREEMENT work.

Compensation for the following expenditures will be allowed when these costs are incurred directly in fulfilling the terms of this AGREEMENT:

2. The maximum total amount payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown on page 1 of this AGREEMENT, unless a supplemental AGREEMENT has been negotiated and executed by the AGENCY prior to incurring any costs in excess of the maximum amount payable.
3. The CONSULTANT may submit invoices to the AGENCY not more often than once per month during the progress of the work for partial payment of work completed to date. The invoices will indicate the units of work completed each day during the invoice period in addition to the previous total. Direct nonsalary costs, such as travel, reproduction, telephone, supplies, and computer costs, shall be supported by an original or a copy of the invoice or billing instrument the CONSULTANT received for payment. For example, a copy of the telephone company's itemized listing showing each call is necessary to verify the billing for long distance telephone calls. Such invoices will be checked by the AGENCY and payment will be made in full for the amount thereof as has been found to represent the value of the completed work, less the amounts previously paid.



**Exhibit D-1**  
**Consultant Fee Determination - Summary Sheet**  
**(Lump Sum, Cost Plus Fixed Fee, Cost Per Unit of Work)**

**Project:** \_\_\_\_\_

**Direct Salary Cost (DSC):**

<u>Classification</u>	<u>Man Hours</u>		<u>Rate</u>	=	=	<u>Cost</u>
_____	_____	X	_____		\$	_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____
_____	_____	X	_____			_____

**Total DSC** = \$ \_\_\_\_\_

**Overhead (OH Cost -- including Salary Additives):**

OH Rate x DSC of \_\_\_\_\_ % x \$ \_\_\_\_\_

**Fixed Fee (FF):**

FF Rate x DSC of \_\_\_\_\_ % x \$ \_\_\_\_\_

**Reimbursables:**

Itemized \_\_\_\_\_

**Subconsultant Costs (See Exhibit G):**

\_\_\_\_\_

**Grand Total**

\_\_\_\_\_

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Exhibit D-2  
Consultant Fee Determination - Summary Sheet  
(Specific Rates of Pay)  
Fee Schedule

Discipline or Job Title	Hourly Rate	Overhead @ _____ %	Profit @ _____ %	Rate Per Hour
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**Exhibit E**  
**Breakdown of Overhead Cost**

<b>Account Title</b>	<b>\$ Beginning Total</b>	<b>% of Direct Labor</b>
Direct Labor		
Overhead Expenses:		
FICA		
Unemployment		
Health/Accident Insurance		
Medical Aid & Industrial Insurance		
Holiday/Vacation/Sick Leave		
Commission/Bonus/Pension		
<b>Total Fringe Benefits</b>		
General Overhead:		
State B&O Taxes		
Insurance		
Administration & Time Not Assignable		
Printing, Stationery & Supplies		
Professional Services		
Travel Not Assignable		
Telephone & Telegraph Not Assignable		
Fees, Dues & Professional Meetings		
Utilities & Maintenance		
Professional Development		
Rent		
Equipment Support		
Office, Miscellaneous & Postage		
<b>Total General Overhead</b>		
<b>Total Overhead</b> (General + Fringe)		
<b>Overhead Rate</b> (Total Overhead / Direct Labor)		

**Exhibit F**  
**Payment Upon Termination of Agreement**  
**By the Agency Other Than for**  
**Fault of the Consultant**

**(Refer to Agreement, Section IX)**

**Lump Sum Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Cost Plus Fixed Fee Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Specific Rates of Pay Contracts**

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

**Cost Per Unit of Work Contracts**

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

## Exhibit G

The AGENCY permits subcontracts for the following portions of the work of this AGREEMENT:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

### Exhibit G-1 Subconsultant Fee Determination - Summary Sheet

Project: \_\_\_\_\_

**Direct Salary Cost (DSC):**

<u>Classification</u>	<u>Man Hours</u>		<u>Rate</u>	=	<u>Cost</u>
_____	_____	X	_____	\$	_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
_____	_____	X	_____		_____
<b>Total DSC</b>			=	\$	_____

**Overhead (OH Cost -- including Salary Additives):**

OH Rate x DSC of \_\_\_\_\_ % x \$ \_\_\_\_\_ = \_\_\_\_\_

**Fixed Fee (FF):**

FF Rate x DSC of \_\_\_\_\_ % x \$ \_\_\_\_\_ = \_\_\_\_\_

**Reimbursables:**

Itemized \_\_\_\_\_ = \_\_\_\_\_

**Grand Total**

= \_\_\_\_\_

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit G-2**  
**Breakdown of Subconsultants Overhead Cost**

<b>Account Title</b>	<b>\$ Beginning Total</b>	<b>% of Direct Labor</b>
Direct Labor		
Overhead Expenses:		
FICA		
Unemployment		
Health/Accident Insurance		
Medical Aid & Industrial Insurance		
Holiday/Vacation/Sick Leave		
Commission/Bonus/Pension		
<b>Total Fringe Benefits</b>		
General Overhead:		
State B&O Taxes		
Insurance		
Administration & Time Not Assignable		
Printing, Stationery & Supplies		
Professional Services		
Travel Not Assignable		
Telephone & Telegraph Not Assignable		
Fees, Dues & Professional Meetings		
Utilities & Maintenance		
Professional Development		
Rent		
Equipment Support		
Office, Miscellaneous & Postage		
<b>Total General Overhead</b>		
<b>Total Overhead</b> (General + Fringe)		
<b>Overhead Rate</b> (Total Overhead / Direct Labor)		

**Exhibit H**  
**(To Be Used Only If Insurance Requirements Are Increased)**

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XIII, Legal Relations and Insurance of this Agreement is amended to \$ \_\_\_\_\_.

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ \_\_\_\_\_.

- Such insurance coverage shall be evidenced by one of the following methods:
- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$ \_\_\_\_\_.

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.





Washington State  
Department of Transportation

<b>Supplemental Agreement</b>	Organization and Address
Agreement Number	
Project Number	Phone
Project Title	New Maximum Amount Payable \$
Description of Work	

The Local Agency of \_\_\_\_\_  
desires to supplement the agreement entered into with \_\_\_\_\_  
and executed on \_\_\_\_\_ and identified as Agreement No. \_\_\_\_\_  
All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

**I**

Section 1, SCOPE OF WORK, is hereby changed to read:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II**

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: \_\_\_\_\_

**III**

Section V, PAYMENT, shall be amended as follows:

\_\_\_\_\_  
\_\_\_\_\_

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Approving Authority Signature

DOT Form 140-063 EF  
Revised 10/97

<p align="center"><b>Supplemental Signature Page for Standard Consultant Agreement</b></p>	<p>Consultant/Address/Telephone</p>
<p>Agreement Number</p>	<p>Project Title And Work Description</p>
<p>Federal Aid Number</p>	
<p>Local Agency</p>	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the Local Agency of \_\_\_\_\_, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**CONSULTANT****LOCAL AGENCY**

By \_\_\_\_\_

By \_\_\_\_\_

Consultant \_\_\_\_\_

Agency \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Consultant \_\_\_\_\_

Agency \_\_\_\_\_

By \_\_\_\_\_

Agency \_\_\_\_\_

By \_\_\_\_\_

Agency \_\_\_\_\_